



SHORELAND ZONING NEWS

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Please Share

For over ten years, the Shoreland Zoning News has been helping town officials better understand the common issues surrounding shoreland zoning administration and enforcement. At least that is the feedback we've been getting. Unfortunately, we also hear that the News is not getting to everyone who would like to see it.

We keep our costs and mailing list manageable by sending four copies to one locally designated contact person to distribute to the selectmen, planning board, appeals board and code officer. If you are the contact person, please make sure the newsletters reach the other town officials.

NRPA Regulates Permanent Structures Adjacent to Water

As you probably know by now, the State's Natural Resources Protection Act (NRPA) was recently amended to regulate the clearing of vegetation within 75 feet of streams that are not shoreland zoned by a municipality. Essentially, the NRPA has adopted the same clearing standards for areas within 75 feet of small streams as the municipalities have adopted for larger Stream Protection Districts. If a landowner believes he or she must clear more than the standards allow, the landowner must apply to the Department for a permit by rule. In order to obtain such a permit the landowner must demonstrate that there is no other practical alternative location on the parcel.

What you may not know, however, is that the Department of Environmental Protection (Department), pursuant to the Natural Resources Protection Act, now requires applicants to demonstrate there is no practical alternative for all regulated activities, including the placement of permanent structures, within 75 feet of all ponds, coastal waters, rivers, streams and brooks. Even when the town grants a variance for a new permanent structure within 75 feet of a regulated water body, the owner must also apply for a NRPA permit to place the struc-

ture. In reviewing any application the Department must determine that there is no practical alternative site on the property on which to place the structure before it can issue a permit. Generally speaking, if the Town has properly reviewed the variance request and granted it, the DEP will accept that there is no other practical location for the structure.

The structure setback issue, and the need for a NRPA permit, is usually not problematic. Most shoreland zoned areas require at least a 75 foot setback from water bodies. However, as noted above, if a variance is issued for a permanent structure within 75 feet of the water, the landowner should be directed to the Department for a NRPA permit as well.

The new regulatory provisions under NRPA will also affect persons who propose building in a General Development District. Typically, that District requires only a 25-foot setback from the water. However, the Department will require a greater setback for the permanent structure if there is a reasonable alternative. For example, if a landowner in a General Development District applies to the municipality to build a garage 25 feet from the

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water, the town ordinance could permit the garage at that distance. But since the garage will be less than 75 feet from the water body, the Department will only issue an NRPA permit if there is no other practical alternative site on the property. The result may be that the siting of the garage 25 feet from the water body is compliant with the Shoreland Zoning Ordinance, but not with the Natural Resources Protection Act requirements. There will need to be good communications between the municipality, the landowner and the Department in those situations.



Fences, Patios, and Decks . . .

Often times we receive questions from the public and from municipal officials as to what types of structures must meet setbacks and what types of structures count towards the square footage calculations in expansions. This can be a confusing issue. Let's look again at the definition of a structure:

Anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground, exclusive of fences. The term includes structures temporarily or permanently located, such as decks and satellite dishes.

This definition expressly excludes fences. This means that a shoreland zoning permit is not required under the Guidelines.

As is clear from the definition, decks are considered structures and therefore must meet setback requirements. It is the Departments interpretation that decks

are part of the primary structure and would require a permit from either the CEO or the PB in the districts where the principal use is allowed. Patios can be a more confusing matter. Sometimes a patio is as simple as paving stones in a pattern next to the house. Since the pavers are for the support of persons and are constructed on the ground, they are a structure. This means that as an accessory structure they would require a permit from the PB or CEO in most Districts.

How about those portable garages (with the canvas or tarp domed roofs)? Are those structures? Absolutely. Regardless of the fact that this type of structure could be moved, because it is a structure it requires the same level of review as sheds, decks, patios, and other structures that contribute to the use of a lot. In addition, placing wheels on a structure does not make it something else. A shed is a shed whether on posts or wheels just as a boat is a boat whether on land or in the water.

The photo below is an example of a "portable" structure that must meet the setback requirements.



Typical "portable" structure

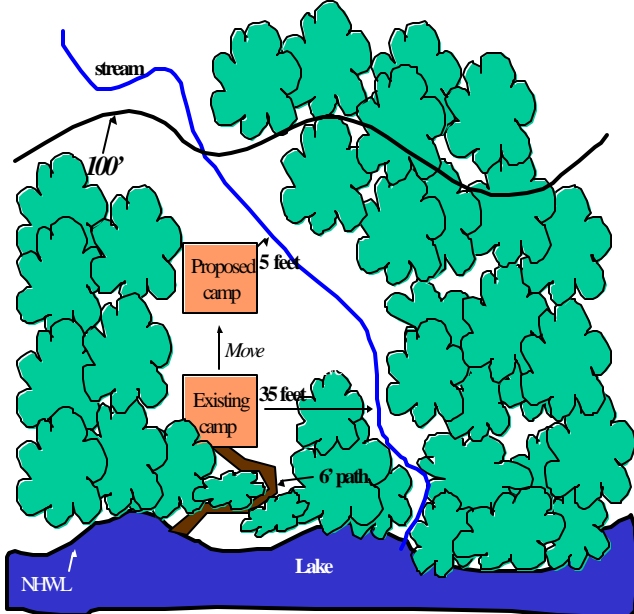
Got a shoreland zoning question or issue you'd like to share with others? The Question and Answer section of the *Shoreland Zoning News* is a good forum for spreading the word. Just drop a note or a telephone message to the shoreland zoning staff at the DEP, and we'll try to include it in an upcoming newsletter.

More Non-Conforming

When a property owner decides it is time to put a basement under the old camp, tear it down and re-build, or propose a significant remodel (greater than 50% of its market value), and if it is a non-conforming structure then it should be moved back to be compliant with the water setback requirement to the greatest practical extent. Typically most town ordinances place the burden of determining the "greatest practical extent" on the planning board. In determining the greatest practical extent a planning board should consider a number of factors such as the lot size, slope of the land, location of other structures, septic site locations, etc.

Occasionally we receive calls from town officials with the question of what to do when, by moving a structure back from one shoreland zoned resource to achieve greater setback compliance from that resource, the structure is moved more closely to and within the shoreland zoned buffer setback of another waterbody. In the drawing below (Figure 1) the camp is moving further back from the lake, but at the same time the proposed location is closer to a stream, hence more non-conforming. The correct legal answer is that it is illegal to make a structure more non-conforming to a waterbody even though it may be more conforming to another waterbody.

Figure 1

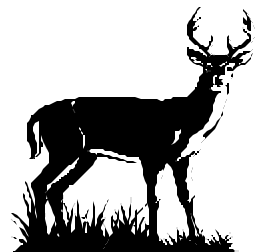


Temporary Structures in the Shoreland Zone

The Natural Resources Protection Act (NRPA), which is administered by the Maine Department of Environmental Protection, differentiates between temporary and permanent structures. Essentially, only structures constructed or erected with a fixed location or attached to a structure with a fixed location for a period exceeding 7 months each year are regulated under the NRPA. If a structure does not exceed this 7-month threshold then it is considered temporary and therefore is not regulated under the NRPA.

The Mandatory Shoreland Zoning Act, however, does not discern between temporary and permanent structures in that they are treated identically from a regulatory standpoint. The *Fences, Patios & Decks* article on Page 2 briefly discusses those portable canvas garages/ carports/ storage sheds from a different aspect. Some have suggested that where they are portable that they are therefore also temporary and should not be regulated under your local shoreland zoning ordinance. The Department disagrees with this claim. These structures must meet the setback as would any other newly constructed structure.

So where do you draw the line? It may be reasonable for a town to allow recreational camping tents to be erected for a few days during the summer (and not on a new gravel pad). How about that picnic table or park-style bench? Technically these structures are subject to the setback requirement even if temporary. The Department, however, would suggest that it is reasonable to allow these to be placed in the buffer nearby the allowed footpath to the water. And *please* don't ask me to remove my portable tree stands...



Staff Changes:

The Department's Shoreland Zoning Unit is pleased to announce that Tracey Thibault has recently been hired to fill the Shoreland Zoning position in our Bangor Regional Office vacated earlier this year by Val Whittier.

Tracey is a Certified Code Enforcement Officer and has worked for several Central Maine towns in that capacity. You may reach her at 941-4116.

Welcome Tracey!

Question & Answer:

Q. *As the CEO, what do I do when the DEP approves a Permit By Rule (PBR) for someone to excavate or disturb soil to build a new camp set back 60 feet from a lake, but the Town has not issued a variance?*

A. The simple answer is to disregard the DEP's decision when determining whether a project meets the Town's Shoreland Zoning (and other) standards. The PBR program falls under the Natural Resources Protection Act, NRPA, which is administered by the State and is a completely separate law from the Mandatory Shoreland Zoning Act. In the case of soil disturbance the NRPA simply prohibits a person from allowing the soil to wash into the lake. Department staff that review PBR's do not know all of the specifics of Maine's 450+ municipal ordinances, but try to catch projects that do not comply with local standards. Some get by us, however. In these instances it is heartening to know that the PBR standards specify that the permit is not valid unless the project conforms to the local Shoreland Zoning standards, i.e. receives municipal approval. If a project does not comply with local standards, simply do not approve it!



DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF LAND AND WATER QUALITY,
17 STATE HOUSE STATION
AUGUSTA, ME 04333